

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. 4:13-cr-0023-TWP-MGN-1
	)	
MATTHEW P. SIMON,	)	
	)	
Defendant.	)	

**REPORT AND RECOMMENDATION**

On August 7, 2014, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on August 1, 2014. Defendant Simon appeared in person with his appointed counsel, Bill Dazey. The government appeared by Gayle Helart, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Jason Nutter.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Simon of his rights and provided him with a copy of the petition. Defendant Simon waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Simon admitted to violations 2, 3, 4, 5, and 7. [Docket No.16.] Government orally moved to dismiss violations 1 and 6 and the Court granted the same.
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation  
Number**

**Nature of Noncompliance**

- 2           **“The defendant shall not unlawfully possess a controlled substance.”**
- 3           **“The defendant shall refrain from an unlawful use of a controlled substance.”**
- On April 25, May 7, 12, 20, and July 23, 2014, the offender submitted drug tests indicating he used opiates. On May 2, 2014, the offender admitted consuming opiates beginning on April 24, 2014. This was previously reported to the Court. On July 30, 2014, the offender admitted to his drug counselor that he consumed heroin on July 27, 2014.
- 4           **“The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.”**
- 5           **“The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.”**
- On May 2, 2014, the offender reported purchasing opiate-based pain medications from random individuals near his residence beginning on April 24, 2014.
- 7           **“The defendant shall participate in a program approved by the U.S. Probation Office for Treatment of narcotic addition or drug or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall contribute to the costs of services rendered based upon his ability to pay as reflected in his monthly cash flow as it relates to the court-approved sliding fee scale.”**
- On July 31, 2014, the offender’s drug treatment counselor advised the offender was terminated from intensive outpatient drug treatment after admitting using heroin on July 27, 2014.

4. The parties stipulated that:

- (a) The highest grade of violation is a Grade B violation.
- (b) Defendant’s criminal history category is II.

- (c) The range of imprisonment applicable upon revocation of Defendant Simon's supervised release, therefore, is 6 - 12 months' imprisonment.

5. The parties jointly recommended a sentence of 6 months with no supervised release to follow.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be revoked, and that he should be sentenced to the custody of the Attorney General or his designee for a period of 6 months with no supervised release to follow.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Dated: 08/08/2014



Denise K. LaRue  
United States Magistrate Judge  
Southern District of Indiana

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